

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI**

COLUMBIAN BANK AND TRUST COMPANY)

Plaintiff,

v.

DANIEAL H. MILLER, P.C.

720 West Sexton Road

Columbia, MO 65203

Serve:

Registered Agent

Danieal H. Miller

720 West Sexton Road

Columbia, MO 65203

And

DANIEAL H. MILLER

Serve at: 720 West Sexton Road

Columbia, MO 65203

Defendants.

Case No. 07-CV-4123-CSOW

COMPLAINT

Plaintiff Columbian Bank and Trust Company, for its Complaint against
Defendants Danieal H. Miller, P.C. and Danieal Miller, alleges:

PARTIES

1. Plaintiff Columbian Bank and Trust Company (“Columbian”) is a banking corporation organized under the laws of the state of Kansas, with its principal place of business located at 4701 West 110th Street, Overland Park, KS 66211.

2. Defendant Danieal H. Miller, P.C. is a professional corporation incorporated under the laws of the state of Missouri, with its principal place of business located at 720 West Sexton Road, Columbia, MO 65203.

3. Defendant Danieal H. Miller is an individual who is a resident and citizen of the state of Missouri, who is domiciled in Boone County, Missouri. Defendant Danieal H. Miller may be served at his business address, 720 West Sexton Road, Columbia, MO 65203.

SUBJECT MATTER JURISDICTION AND VENUE

4. This Court has diversity of citizenship subject matter jurisdiction over this action, pursuant to 28 U.S.C. § 1332, because the amount in controversy between the Plaintiff and the Defendants exceeds the sum of \$75,000, exclusive of interest and costs, and because there is complete diversity of citizenship between the Plaintiff, on the one hand, and the Defendants on the other hand.

5. Venue is proper in this Court because each of the Defendants resides in, and/or does business in, this judicial district.

COUNT I – BREACH OF PROMISSORY NOTE AGAINST DEFENDANT DANIEAL H. MILLER, P.C.

6. On or about August 23, 2006, for value received, Defendant Danieal H. Miller, P.C. made and delivered to Plaintiff Columbian, at its office in Overland Park, Kansas, a promissory note in writing, by which Defendant Danieal H. Miller, P.C. promised to pay to Columbian the principal amount of \$199,995.38, with interest thereon at an initial rate of 10.04% per annum, payable on demand, or if no demand is made, installments of \$4,267.91 commencing on September 23, 2006. A true copy of the

foregoing promissory note is attached hereto, marked "Exhibit A", and incorporated by reference herein.

7. Defendant Danieal H. Miller, P.C. is in default on the Exhibit A promissory note, and has not made any payments on said promissory note since January 31, 2007.

8. Pursuant to the terms of the Exhibit A promissory note, and pursuant to demand which has been made by Plaintiff Columbian, the full amount of the remaining indebtedness on the Exhibit A promissory note is now due and payable to Plaintiff Columbian. The amount due to Plaintiff Columbian, inclusive of interest, as of June 25, 2007, was in the amount of \$202,481.33. In addition, Defendant Danieal H. Miller, P.C. owes per diem interest on the Exhibit A promissory note in the amount of \$80.13 for each day after June 25, 2007.

9. Pursuant to the terms of the Exhibit A promissory note, Plaintiff Columbian is also entitled to recover all of its attorneys' fees and expenses incurred in collecting from Defendant Danieal H. Miller, P.C. the amounts due and owing by Defendant Danieal H. Miller, P.C. on the Exhibit A promissory note.

WHEREFORE, Plaintiff Columbian prays for judgment in its favor and against Defendant Danieal H. Miller, P.C. for the amount due and owing by Danieal H. Miller, P.C. on the Exhibit A promissory note, in the amount of \$202, 481.33 as of June 25, 2007, plus per diem interest of \$80.13 for each day after June 25, 2007, until the date of judgment; for Plaintiff's costs; and for the full amount of Plaintiff Columbian's attorneys' fees and expenses incurred in collecting the amount due from Defendant Danieal H. Miller, P.C.; and for such further relief as the Court deems just.

COUNT II – BREACH OF COMMERCIAL GUARANTY AGAINST
DEFENDANT DANIEAL H. MILLER

10. Plaintiff restates and incorporates by reference herein the allegations of paragraphs 1 through 9 of this Complaint.

11. On or about March 2, 2006, Defendant Danieal H. Miller made and delivered to Plaintiff Columbian a written Commercial Guaranty, a copy of which is attached hereto as Exhibit B.

12. Pursuant to the terms of the Exhibit B Commercial Guaranty, Defendant Danieal H. Miller, as Guarantor, guaranteed the full amount of the indebtedness of Defendant Danieal H. Miller, P.C. to Columbian.

13. Because Danieal H. Miller, P.C. is in default on its obligations under the Exhibit A promissory note to Plaintiff Columbian, Defendant Danieal H. Miller, as Guarantor under the Exhibit B Commercial Guaranty, is obligated to pay Plaintiff Columbian the full amount that is owed by Danieal H. Miller, P.C. to Plaintiff Columbian on the Exhibit A promissory note.

14. Pursuant to the terms of the Exhibit B Commercial Guaranty, Plaintiff Columbian is entitled to recover from Defendant Danieal H. Miller the full amount of its attorneys' fees, court costs, and expenses incurred in seeking enforcement of its rights under the Exhibit B Commercial Guaranty.

WHEREFORE, Plaintiff Columbian prays for the entry of judgment in its favor and against Defendant Danieal H. Miller on Count II of this Complaint, in the amount of \$202, 481.33 as of June 25, 2007, plus the additional amount of \$80.13 per diem interest for each day after June 25, 2007, until the date of judgment; for its Court costs incurred

herein; and for its attorneys' fees and expenses incurred in the enforcement of its rights under the Exhibit B Commercial Guaranty against Defendant Danieal H. Miller; and for such further relief as the Court deems just.

**COUNT III – BREACH OF PROMISSORY NOTE AGAINST DEFENDANT
DANIEAL H. MILLER**

15. Plaintiff Columbian restates and incorporates by reference herein the allegations of paragraphs 1 through 5 of this Complaint.

16. On or about September 3, 2006, for value received, Defendant Danieal H. Miller made and delivered to Plaintiff Columbian, at its office in Overland Park, Kansas, a promissory note in writing, under which Defendant Danieal H. Miller promised to pay, upon the demand of Plaintiff Columbian, the principal sum of \$92,535.61, with an initial interest rate of 9.57% per annum, with periodic payments to be made on said note, as specified in said note, beginning on October 3, 2006.

17. A true copy of the foregoing promissory note executed by Defendant Danieal H. Miller is attached hereto, marked "Exhibit C", and incorporated by reference herein.

18. Defendant Danieal H. Miller is currently in default on the Exhibit C promissory note.

19. On or about May 4, 2007, Plaintiff Columbian made demand on Defendant Danieal H. Miller that Danieal H. Miller pay off the Exhibit C promissory note in full. Despite such demand, Defendant Danieal H. Miller has not paid off the Exhibit C promissory note.

20. As of June 25, 2007, the amount owed by Defendant Danieal H. Miller to Columbian under the Exhibit C promissory note was in the amount of \$86,496.54,

inclusive of interest. In addition, for each day after June 25, 2007, Defendant Danieal H. Miller owes, under the Exhibit C promissory note, the additional amount of \$34.86 per diem.

21. Pursuant to the express terms of the Exhibit C promissory note, Plaintiff Columbian is entitled to recover from Defendant Danieal H. Miller the full amount of its attorneys' fees and expenses incurred in collecting the amount due from Defendant Danieal H. Miller under the Exhibit C promissory note.

WHEREFORE, Plaintiff Columbian prays for the entry of judgment in its favor and against Defendant Danieal H. Miller on Count III of this Complaint, in the amount of \$86,496.54 as of June 25, 2007, plus the additional amount of \$34.85 per diem interest for each day after June 25, 2007, until the date of judgment; for its Court costs incurred herein; for its attorneys' fees and expenses incurred in the collection of the amount due on the Exhibit C promissory note; and for such further relief as the Court deems just.

/s/ George A. Barton

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